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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,067	01/26/2006	Pascal Diss	BDL-494XX	2032
207 7590 07/28/2010 WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109				
EXAMINER MURATA, AUSTIN				
ART UNIT		PAPER NUMBER		
1712				
MAIL DATE		DELIVERY MODE		
07/28/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/566,067

Applicant(s)

DISS ET AL.

Examiner

AUSTIN MURATA

Art Unit

1712

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 4, 5, 7 and 8.
Claim(s) withdrawn from consideration: 9-11 and 14.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michael Cleveland/
Supervisory Patent Examiner, Art Unit 1712

/AUSTIN MURATA/
Examiner, Art Unit 1712

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant argues that the DE NORA reference does not teach having phosphate and TiB₂ in the composition. The examiner maintains that the reference teaches using phosphates of aluminum and refractory boride such as TiB₂. DE NORA claim 15 and 17 clearly contemplates using a boron compound and phosphate compound in the same composition.

Applicant further argues that the composition of DE NORA does not impregnate the carbon body. However, the reference clearly teaches in the abstract the composition impregnating a carbon component.

Applicant further argues there is not disclosure for a particular amount of TiB in the impregnation composition, however the examiner maintains the specific composition would be an optimization with concentration being a result effective variable in column 8 lines 20-38.

Applicant further argues the DE NORA reference teaches heating the impregnation composition which is different from the claimed invention. However the examiner does not find any claim limitation that teaches preventing heating .

Applicant further argues there is not in depth impregnation in the reference as the new limitation requires. However, column 3 line 25 teaches 3cm of impregnation which the examiner considers "in depth". 3cm could be "penetrating to the core" as taught by the original specification page 8.

Regarding the combination applicant argues the combination would suggest using ZrB₂ instead of TiB₂. However, as recognized equivalents a simple substitution would not require ZrB₂ be in the final composition.

For the reasons above and reasons stated in the previous final rejection, claims 1, 4, 5, 7, and 8 can be rejected over DE NORA (US 6,228,424) in view of MOREL (US 5,420,084).